

# News Release



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## **Mine Commission rules in favor of MSHA in Massey Energy case** ***Judge finds MSHA did not abuse its discretion in adopting UBB investigation protocols***

**ARLINGTON, Va.** – The U.S. Department of Labor’s Mine Safety and Health Administration announced that an Administrative Law Judge with the Federal Mine Safety and Health Review Commission has ruled in favor of MSHA in a legal challenge filed last June by Massey Energy’s Performance Coal Co. The company had challenged MSHA’s protocol guidelines in the underground accident investigation of the Upper Big Branch Mine, in which the agency prohibited Massey Energy investigators from using cameras, collecting evidence, mapping and conducting sampling. In her ruling, ALJ Margaret A. Miller held that MSHA did not abuse its discretion in adopting the protocols and that the protocols “are rationally connected to safely conducting the accident investigation.”

MSHA, along with West Virginia’s Office of Miners’ Health Safety and Training, had outlined specific protocols in June to ensure the preservation of evidence. The agency considered input from all entities with an interest in the investigation, including Performance Coal. Furthermore, MSHA modified those protocols to accommodate a number of the company’s requests.

“Naturally, we are pleased with Judge Miller’s ruling in this case,” said Joseph A. Main, assistant secretary of labor for mine safety and health. “The joint protocols were established with one goal in mind: to maintain the safety of all persons involved in the underground investigation and their exposure to potentially hazardous conditions. Having too many people underground would delay the investigation and increase the amount of time it takes for those persons to exit the mine in the event of an emergency.

“Massey’s complaints about the investigation were unfounded, and the company was not disadvantaged in any way – they were allowed to request that certain photos be taken, to view them underground and promptly receive copies of them, to receive copies of maps, and to receive excess material from dust samples whenever possible,” Main added.

The ALJ’s decision summarizes UBB lead investigator Norman Page’s rationale for establishing the protocol guidelines. Page determined that a limited number of cameras should be underground, taking into consideration the fact that cameras are not permissible, that gas checks must be made before they are used, and that the inspection will proceed more quickly with only one photographer. In addressing the issue of mapping, Page again considered the issue of permissibility and the number of persons underground for purposes of safety. The same was true for dust sampling.

After reviewing Page’s actions, Judge Miller concluded that the secretary of labor, “may insist on protocols that she believes are necessary to ensure the safety of the investigation. While those protocols may not be what Performance wants or expects, they are nonetheless reasonable and intended to ensure the safety of all persons in the mine.”

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